IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7892 OF 2006

Shri Shankar Balwant Dombe ...Petitioner

v/s

Sou Sindhu Balkrishna Salunke and ors. ...Respondents

Mr A.S. Desai for Petitioner.

Mr R.S. Kate for Respondent Nos.1 and 2.

CORAM : D.K. DESHMUKH J.

DATE : 6TH JULY 2007.

P.C. :-

1. Rule, returnable forthwith. Heard finally by consent of parties.

2. The respondent No.1 - Sindhu Salunke filed a dispute before the Co-operative Court challenging the validity of General Body Resolution dated 6th March 2005 of the Co-operative Society. By that Resolution, names of the persons who were Directors and office bearers of the Society were declared. Thus, in substance, the dispute was election dispute challenging the validity of the election of the Managing Committee of the Co-operative Society. In that dispute, an application was made for interim order. The Trial Court, by reasoned order, declined to make any interim order. That order is dated 13th September 2006. Against that order, appeal was preferred to the appeal Court. The Appeal Court by order dated 12th October 2006 has set aside the order made by the Trial Court and stayed the implementation of the Resolution No.10 by which elections of the office bearers of the Society were declared. I have heard learned counsel for both the sides. The impugned order is against the well settled law that in an election dispute an order restraining

elected members from functioning cannot be made. In the present case, the elections were declared on 6th March 2005 and an order staying the Resolution of that election has been made one and half year thereafter. Perusal of the Appeal Court order shows that according to the Appeal Court, the disputant has made out a very strong prima facie case that the elections were not properly held but existence of strong prima facie case is not the only reason for grant of interim order. Because of the Resolution passed declaring the result of the elections, the managing body has ceased to be in office. The result of the order passed by the Appeal Court is that there will be vacuum in the office of the Managing Committee of the Society. An order restraining elected members from functioning cannot be made at interim stage. The order passed by the Appeal Court therefore is liable to be set aside. In the result therefore, the petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a). The respondent No.1 to pay cost of this petition to the petitioner. Cost is quantified at Rs.5,000/-.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary as true copy.

. Certified copy expedited.